

APR 08 2005

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**FACSIMILE COVER LETTER**

**To:** Group Art Unit 1635  
**Firm:** U.S. Patent and Trademark Office  
**Facsimile:** (703) 872-9306  
**From:** Thomas J. Kowalski (Reg. No. 32,147)  
Deborah L. Lu (Reg. No. 50,940)  
**Date:** April 8, 2005  
**Re:** Application No. 09/760,574  
FLH Reference No. 574313-3154.1

**Number of Pages:** 121  
(including cover page)

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If you do not receive all pages or are unable to read the transmission, please call and ask for Deborah Lu (Ext. 2088).

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Enclosed is an Response To Office Action Under 37 C.F.R. § 1.116, Record Of Interview, Statement Of Common Ownership And Request For Interview, Declaration Of Dr. Lorne A. Babiuk And Supplemental Information Disclosure Statement Under 37 C.F.R. §§ 1.97(D) And 1.98 for filing in connection with U.S. Application No. 09/760,574.

Sincerely,



Deborah L. Lu  
Registration No. 50,940

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**CONFIDENTIALITY NOTICE**

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**PATENT**  
**574313-3154.1**  
**USSN 09/760,574**

**REQUEST FOR INTERVIEW**

If any issue remains as an impediment to allowance, a further interview with the Examiner and SPE are respectfully requested; and, the Office Action is additionally requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

PATENT  
574313-3154.1  
USSN 09/760,574

### **RECORD OF INTERVIEW**

This is to record matters discussed during the April 5, 2005 telephonic interview among Jon Eric Angell (Examiner), Dave Trong Nguyen (Examiner), Thomas J. Kowalski (Attorney, Reg. No. 32,147) and Deborah Lu (Agent, Reg. No. 50,940). Examiners Angell and Nguyen are thanked for the many courtesies extended during the interview.

The review article by Sylvia van Drunen Littel-van den Hurk, Shawn L. Babiuk and Lorne A. Babiuk titled "Strategies for improved formulation and delivery of DNA vaccines to veterinary target species" published in Immunological Reviews 2004, Vol. 199:113-125 ("Babiuk") was discussed. The Examiners maintained the view that Babiuk was considered to be the state of the art at the time of filing. Applicants agreed to submit a Declaration by Dr. Lorne Babiuk for consideration and to discuss Babiuk in the Response to the Office Action.

PCT Publication No. WO 98/03200, which the Applicants cited in the Supplemental Information Disclosure Statement filed November 3, 2004, and the Examiner made of record in the Office Action, was discussed. Applicants agreed to discuss this publication in the Response to the Office Action. Applicants also agreed to submit a Statement of Common Ownership regarding the '473 patent and the present application.

Examiner Nguyen suggested additional claims directed to the adjuvants DMRJE and DMRJE-DOPE. Applicants agreed to clarify claim 118 to depend from claim 84 or 85.

Accordingly, a summary and record of the interview is provided herewith.

PATENT  
574313-3154.1  
USSN 09/760,574

### **STATEMENT OF COMMON OWNERSHIP**

Please accept this statement of common ownership which asserts that Merial is the common owner of U.S. Patent No. 6,376,473 ("the '473 patent) and application Serial No.: 09/760,574 ("the '574 application").

The Office Action dated January 25, 2005 included a rejection of claims 84-118 under the judicially created doctrine of obviousness-type double patenting and under 35 U.S.C. 103(a) each of which utilized the '473 patent. While it is not agreed that obviousness has been established by the Examiner for the abovementioned claims, these rejections would be rendered moot if the '473 patent were ineligible for use as prior art.

Pursuant to 35 U.S.C. § 103(c), MPEP 706.02(l)(1) and MPEP 706.02(l)(2), the burden resides with the applicants to show that the '473 patent and the present application was commonly owned at the time the claimed invention was made or subject to an obligation of assignment that would establish common ownership.

When the '574 application was filed January 16, 2001, both the '574 application and the application of the '473 patent ("the '279 application) listed Jean-Christophe Audonnet as an inventor and both applications had assigned their respective inventions to Merial. The assignment of the '279 application was recorded on January 29, 1999 on Reel 9743/Frame 0425. The assignment of the '574 application was recorded on July 16, 2001 on Reel 011983/Frame 0692. Therefore, the appellants believe that common ownership has been established and as such U.S. Patent No. 6,376,473 is disqualified as prior art.